

of gauze but of pieces sewed together; and it was not sterile but was contaminated with viable micro-organisms.

It was alleged to be misbranded in that the statements on the carton, "Gauze Bandage," "Sterilized After Packing," and "10 yds.," were false and misleading as applied to an article which did not consist of continuous strips of gauze, which was not sterile, and which was not 10 yards long, and the label of which did not reveal the fact, material in the light of the representation that the article was gauze bandage 10 yards long, that the bandage did not consist of a continuous strip but of pieces sewed together. It was alleged to be misbranded further in that the package failed to bear on its label an accurate statement of the quantity of the contents in terms of measure; and in that the container was so made, formed, or filled as to be misleading.

On September 30, 1940, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

PROPHYLACTICS

409. Action to enjoin and restrain distribution of adulterated and misbranded rubber prophylactics. U. S. v. Dean Rubber Manufacturing Co. Consent decree perpetually enjoining and restraining defendant from distributing in interstate commerce or exporting in foreign commerce rubber prophylactics. (Sample No. 10786-E.)

On August 8, 1940, the United States attorney for the Western District of Missouri filed a bill of complaint against the Dean Rubber Manufacturing Co., a corporation, North Kansas City, Mo., alleging that the defendant was engaged in the manufacture, distribution, and sale in interstate and foreign commerce of rubber prophylactics; that the said prophylactics were recommended and purported to be sold for the prevention of venereal diseases; that they were labeled variously: "Beware of social diseases. Be protected," "An aid in preventing venereal diseases," "No. 1 grade blown tested," "First Quality," and "Guaranteed two years against deterioration."

The complaint alleged further that during the period from on or about January 1 to on or about June 30, 1940, a large number of seizures had been made of prophylactics shipped in interstate commerce by the defendant which were adulterated in that their quality fell below that which they purported or were represented to possess and were misbranded in that the labeling was false and misleading.

The complaint alleged further that during the years 1938 and 1939 a large number of samples of rubber prophylactics shipped in interstate commerce by the defendant had been collected and found upon examination to contain holes.

The complaint alleged further that the defendant had on hand a large quantity of the article adulterated and misbranded as aforesaid which he contemplated introducing into interstate commerce and exporting in foreign commerce; that the prophylactics so intended for export were not in accordance with the specifications of any foreign purchaser and were misbranded and adulterated in conflict with the laws of the countries to which they were intended for export. The complaint alleged further that because of the methods of manufacture, inspection, and preparation for shipment, used by the defendant, a large percentage of faulty articles was inevitable; that the defendant had not changed its methods and had on hand for distribution in interstate and foreign commerce a large supply of defective prophylactics intended for distribution in interstate and foreign commerce.

The complaint prayed that the defendant, its officers, and its agents be perpetually enjoined from distributing in interstate commerce or shipping for export defective stock which it had on hand or might subsequently acquire. It prayed further that a temporary restraining order issue forthwith without a hearing and that, within 10 days thereafter, a hearing be held and a temporary injunction be issued to be continued until a final hearing could be had and the complainant granted a permanent injunction. On August 8, 1940, a temporary restraining order was issued in accordance with the prayer of the bill of complaint and August 15, 1940, was fixed as the date for a hearing as to why a temporary injunction should not issue.

On August 15, 1940, the defendant having consented to the entry of a decree, an injunction issued enjoining and perpetually restraining the defendant, its officers, or agents from distributing in interstate commerce or for export, except in compliance with the law, any defective prophylactic which it then had on hand at North Kansas City, Mo., or any other point, or might subsequently acquire. On September 11, 1940, the court set aside the order of

August 15, 1940, and entered an order with the same restraining provisions as the order of August 15, 1940, and defining "defective" within the meaning of the order as prophylactics which contained holes or were otherwise imperfect to the extent of making them unsuited for the prevention of venereal diseases.

410. Alleged violation of injunction. U. S. v. Dean Rubber Manufacturing Co. Defendant adjudged not guilty. (Sample No. 10786-E.)

On June 6, 1941, the United States attorney for the Western District of Missouri filed an information against the Dean Rubber Manufacturing Co., a corporation, North Kansas City, Mo., alleging that on or about November 27, 1940, the defendant shipped in interstate commerce from North Kansas City, Mo., to Omaha, Nebr., and Pittsburgh, Pa., quantities of prophylactics which were adulterated. The information further alleged that said shipments were made by the defendant wilfully, unlawfully, contumaciously and contemptuously, in violation of the injunction theretofore entered in said court, reported in notice of judgment D. D. N. J. No. 409. On the same date an order was entered that the defendant appear before the court on June 23, 1941, to show cause why it should not be punished for contempt for violation of such injunction.

On June 23, 1941, the case was heard before the court and at the completion of the evidence, the court found the defendant not guilty of wilfully and contemptuously violating the injunction.

Nos. 411 to 425 report actions based on interstate shipment of prophylactics that were defective because of the presence of holes.

411. Adulteration and misbranding of prophylactics. U. S. v. Goodwear Rubber Co., Inc., and Harry L. Ain. Plea of guilty. Corporation fined \$1,000. Individual sentenced to 30 days in jail on each count. Execution of sentence on count II suspended and defendant placed on probation for 1 year to commence after having served 30 days' jail sentence on count I. (F. D. C. No. 2096. Sample No. 94913-D.)

On September 30, 1940, the United States attorney for the Southern District of New York filed an information against the Goodwear Rubber Co., a corporation, New York, N. Y., and Harry L. Ain, alleging shipment on or about November 29, 1939, from the State of New York into the State of Florida, of a quantity of prophylactics that were adulterated and misbranded.

The articles were alleged to be adulterated in that their quality fell below that which they were represented to possess in that they were represented to consist of excellent quality, air-tested, rubber prophylactics; whereas they did not consist of excellent quality, air-tested, rubber prophylactics but were defective because they contained holes. They were alleged to be misbranded in that the statements "Prophylactic Rubbers * * * Excellent Quality * * * Guaranteed 5 Years," borne on the cartons, and the statement "Air Tested" on the articles were false and misleading, since the said statements represented that the articles consisted of excellent quality, air-tested, rubber prophylactics; whereas they did not, but were defective because they contained holes.

On October 2, 1940, pleas of guilty having been entered on behalf of the defendants, the court imposed a fine of \$1,000 against the corporation and sentenced the individual defendant, Harry L. Ain, to serve a sentence of 30 days in jail on count I and also 30 days in jail on count II. The sentence on the latter count was suspended and the defendant was placed on probation for 1 year to commence after serving the jail sentence on count I.

412. Adulteration and misbranding of prophylactics. U. S. v. Charles E. Jenkins, James L. Tyrrell, and Maurice Gusman (Killashun Sales Division). Pleas of guilty. Fine, \$400. (F. D. C. No. 2100. Sample Nos. 3112-E, 3114-E.)

On August 12, 1940, the United States attorney for the Northern District of Ohio filed an information against Charles E. Jenkins, James L. Tyrrell, and Maurice Gusman, copartners, trading as the Killashun Sales Division, at Akron, Ohio, alleging shipment on or about August 25, 1939, from the State of Ohio into the State of Pennsylvania, of quantities of prophylactics which were adulterated and misbranded. The article was labeled in part: "Made From * * * Liquid Latex Mfg. By L. E. Shunk Latex Prod. Inc. Akron, Ohio, U. S. A."

The articles were alleged to be adulterated in that their quality fell below that which they purported or were represented to possess, in that they were represented to be disease preventives, and in that they were guaranteed to be effective for such purpose for 5 years; whereas they were not disease preventives which were guaranteed to be effective for such purpose for 5 years, since they were in whole or in part defective because of the presence of holes.